

1 Q And now I take it that in these
2 conversations that you have with the field
3 from time to time, you discussed with them
4 times where they may be thinking about putting
5 in a channel change request to you, do you
6 not?

7 A Sure, sometimes.

8 Q And so they would know ahead of
9 ever putting one into you whether or not it
10 looked like it was a good idea or a bad idea,
11 correct?

12 A We didn't have time to discuss
13 every CCR before it comes up, but I do have
14 these field phone calls and so they get a good
15 gist of what's going on.

16 Q And so they generally would know
17 when the CCR was a good idea or a bad idea if
18 you had that discussion prior to that in that
19 phone call, correct?

20 A Sure. I talked to lots of people
21 one on one. They call me on a regular basis
22 and ask me lots of individual questions as

1 well.

2 Q Thank you, Ms. Gaiski. I don't
3 have any further questions.

4 JUDGE SIPPEL: Did that raise
5 anything else?

6 MR. SCHONMAN: Nothing from the
7 Enforcement Bureau.

8 JUDGE SIPPEL: Mr. Carroll?

9 MR. CARROLL: Your Honor, for
10 completeness of the record only, two pages
11 after the deposition that was illustrated in
12 the record, the witness's testimony on pages
13 86 and 87 were not read into the record.

14 JUDGE SIPPEL: Rather than taking
15 the time.

16 MR. CARROLL: I can just designate
17 them for the record. For completeness, I
18 think that the portion Mr. Phillips read
19 should include as well page 86 which I think
20 is just two pages after where he was, starting
21 at line 13, the question: "When did you reach
22 out to Ms. Bardon to ask her to dual

1 illuminate Tennis Channel?"

2 And the answer continuing over on
3 to page 87, line 14. So from 86, line 13 of
4 the deposition to 87, line 14. Thank you,
5 Your Honor.

6 JUDGE SIPPEL: Any objection to
7 that?

8 MR. PHILLIPS: No objection, Your
9 Honor. Can I have one second?

10 JUDGE SIPPEL: Yes, sir.

11 MR. PHILLIPS: I read slower than
12 the rest of the people in this room
13 apparently.

14 (Pause.)

15 MR. PHILLIPS: No objection, Your
16 Honor. That's fine.

17 JUDGE SIPPEL: All right. And I
18 have no intention of having the deposition
19 marked, but it's in the record.

20 MR. CARROLL: It's in the record.

21 JUDGE SIPPEL: I have no
22 questions. I have no further questions, Ms.

1 Gaiski.

2 THE WITNESS: Thank you very much.

3 JUDGE SIPPEL: I am going to
4 excuse you as a witness. You're no longer
5 under oath. And you may proceed with the rest
6 of your day.

7 THE WITNESS: Thank you.

8 JUDGE SIPPEL: Thank you, ma'am.

9 (The witness was excused.)

10 JUDGE SIPPEL: It's 10 to 12.
11 What's the next witness coming up? Who is the
12 next witness I should say.

13 MR. CARROLL: Mr. Donnelly, who I
14 think should be a relatively short witness and
15 then one expert behind that.

16 So if we took a short break, I'm
17 fairly certain Your Honor that we could get
18 Mr. Donnelly's direct certainly in by the
19 lunch break and -- or maybe make even more
20 progress.

21 JUDGE SIPPEL: Why don't we do
22 this? Why don't we -- it's 10 of 12. Come

1 back at 5 after 12 with Mr. Donnelly on the
2 stand. And let's see how far we get. Let's
3 do it that way, all right.

4 MR. PHILLIPS: That sounds
5 terrific, Your Honor.

6 JUDGE SIPPEL: We'll recess until
7 12:05. Thank you.

8 (Off the record.)

9 JUDGE SIPPEL: Your next witness
10 is?

11 MR. MOSS: Good afternoon, Your
12 Honor. Joseph Donnelly.

13 JUDGE SIPPEL: Mr. Donnelly,
14 please be seated. Raise your right hand,
15 please?

16 WHEREUPON,

17 JOSEPH MICHAEL DONNELLY
18 WAS CALLED FOR EXAMINATION BY COUNSEL FOR
19 COMCAST CABLE COMMUNICATIONS, LLC AND, HAVING
20 FIRST BEEN DULY SWORN, WAS EXAMINED AND
21 TESTIFIED AS FOLLOWS:

22 JUDGE SIPPEL: Please be seated.

1 MR. CARROLL: Your Honor, my
2 colleague, Mr. Moss --

3 JUDGE SIPPEL: Mr. Moss, you may
4 proceed.

5 MR. MOSS: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. MOSS:

8 Q Good afternoon, Mr. Donnelly.

9 A Good afternoon.

10 Q Sir, can you please state your
11 full name for the record?

12 A Joseph Michael Donnelly.

13 Q And Mr. Donnelly, who is your
14 current employer?

15 A I work for NBC Universal.

16 Q And what is your position with
17 NBC?

18 A I am the CFO of the Broadcasting
19 Group.

20 Q Prior to joining NBC who was your
21 employer?

22 A I worked for Comcast Corporation.

1 Q And when did you join Comcast?

2 A In 1996.

3 Q What was your role when you joined
4 Comcast?

5 A When I joined Comcast I worked in
6 our Corporate Development Department. The
7 Corporate Development Department is the group
8 that works on mergers and acquisitions,
9 valuations, due diligence, joint ventures,
10 things of that nature.

11 Q And did you have any background in
12 mergers and acquisitions prior to joining
13 Comcast?

14 A I did. Prior to joining Comcast I
15 had worked for a couple of small funds that
16 have worked on mergers and acquisitions as
17 well as coming with a finance degree.

18 JUDGE SIPPEL: Mutual funds?

19 THE WITNESS: No, small buy out
20 funds. Funds that were looking to buy
21 companies.

22 BY MR. MOSS:

1 Q And did there come a point in
2 which you changed roles from the Corporate
3 Development Group when you were at Comcast?

4 A I did. I worked in Corporate
5 Development from 1996 until some time in the
6 fall, winter of 2005 and then in 2005 I became
7 the CFO of Comcast Programming Division.

8 Q And what were your --

9 JUDGE SIPPEL: CFO?

10 THE WITNESS: I'm sorry, Chief
11 Financial Officer.

12 JUDGE SIPPEL: Chief Financial
13 Officer.

14 THE WITNESS: That's correct,
15 Chief Financial Officer.

16 JUDGE SIPPEL: Of the what?

17 THE WITNESS: The Programming
18 Division, So in the Comcast Programming
19 Division we owned a handful of national
20 networks like InStyle, Golf, Versus, national
21 networks. And then we also owned a handful of
22 regional sports networks, so SportsNet

1 Philadelphia or SportsNet San Francisco, just
2 a local market SportsNet.

3 JUDGE SIPPEL: Mr. Moss, you may
4 continue.

5 MR. MOSS: Thank you, Your Honor.

6 BY MR. MOSS:

7 Q And so what were your roles and
8 responsibilities when you were the CFO of the
9 Programming Division at Comcast?

10 A I was responsible for the overall
11 financial performance of the company, the
12 reporting for the entire Programming Division,
13 for budgeting, for forecasting, monthly
14 variance analysis, as well as business
15 development deals related to the Programming
16 Division.

17 Q And does business development
18 include mergers and acquisitions and other
19 strategic transactions?

20 A Yes, it does.

21 Q Mr. Donnelly, were you familiar
22 when you worked on the programming side with

1 the carriage of Golf and Versus in the
2 industry?

3 A Yes, I was.

4 Q And what was your understanding of
5 how Golf and Versus were carried by
6 distributors in the industry?

7 A Golf and Versus generally had
8 rather broad carriage within the industry.

9 Q And how about the carriage on
10 Comcast, how were they carried on Comcast?

11 A The carriage on Comcast was
12 similar to carriage within the industry. They
13 were on the more highly penetrated tiers of
14 Comcast and of other operators. We had paid
15 substantial launch support many years ago to
16 the tune of hundreds of millions of dollars to
17 obtain that carriage.

18 Q You used the phrase launch
19 support. Can you just describe for us what
20 you mean by launch support?

21 A Sure. So launch support, when a
22 cable network was trying to get initial

1 carriage with an operator, whether it be a
2 cable operator, satellite company or in this
3 world a telco, you would pay oftentimes fees
4 to entice the operator to carry you. So you
5 would pay it in terms of actual cash that you
6 would pay the operator of in terms of free
7 carriage or things of that nature.

8 Q And did you say it's your
9 understanding that Golf and Versus paid this
10 launch support to distributors?

11 A Yes, we most definitely did. We
12 paid hundreds of millions of dollars.

13 Q And does that include Comcast?
14 Were payments made to Comcast in addition to
15 other distributors?

16 A Payments were made to Comcast just
17 like it was made to other operators.

18 Q Mr. Donnelly, did you prepare
19 written testimony in this matter?

20 A Yes, I did.

21 MR. MOSS: May I approach, Your
22 Honor?

1 JUDGE SIPPEL: You may.

2 MR. MOSS: Thank you.

3 JUDGE SIPPEL: Thank you.

4 MR. MOSS: This is marked for
5 identification as Comcast Exhibit 76.

6 (Whereupon, the above-referred to
7 document was marked as Comcast
8 Exhibit No. 76 identification.)

9 JUDGE SIPPEL: Thank you.

10 BY MR. MOSS:

11 Q Mr. Donnelly, can you identify
12 this document for us?

13 A Yes, this is my written testimony
14 for this case.

15 Q And if you can just direct your
16 attention to the last page of the document.
17 Is that your signature?

18 A Yes, it is.

19 MR. MOSS: Your Honor, we'd like
20 to move to admit Comcast Exhibit 76 into
21 evidence.

22 JUDGE SIPPEL: Any objection?

1 MR. PHILLIPS: No objection, Your
2 Honor.

3 JUDGE SIPPEL: Comcast Exhibit 76
4 as identified by Mr. Moss is received in
5 evidence at this time as Exhibit 76.

6 (The document, having been marked
7 previously for identification as
8 Comcast Exhibit 76, was received
9 in evidence.)

10 JUDGE SIPPEL: You may proceed,
11 sir.

12 MR. MOSS: Thank you, Your Honor.

13 BY MR. MOSS:

14 Q Mr. Donnelly, did you come to be
15 familiar with The Tennis Channel during your
16 time at Comcast?

17 A Yes, I did.

18 Q And when did you first do any work
19 related to The Tennis Channel?

20 A It was in 2006, relative to a
21 carriage for equity deal that was brought to
22 Comcast Cable.

1 Q And that was brought to Comcast
2 Cable by whom?

3 A I'm sorry. The Tennis Channel had
4 entered into a carriage for equity deal to get
5 carriage on Dish Network EchoStar. And under
6 the MFN of Comcast affiliation agreement with
7 The Tennis Channel, The Tennis Channel was
8 required to bring that to Comcast Cable and
9 make the same offer. So in connection with
10 that offer, we were, we got involved.

11 Q And I think you said it was
12 brought in to the cable side. Do you have an
13 understanding of to whom the offer was made on
14 the cable side?

15 A It would have gone in to Matt
16 Bond's department.

17 Q And did -- how did you become
18 involved in the evaluation of the MFN?

19 A Sure. So Matt's group asked our
20 group if we would perform an analysis of the
21 equity, basically give him a sense of what we
22 thought the equity was worth that he was being

1 offered. I came from an M&A environment. I
2 came from corporate development and we had our
3 own Business Development Group within the
4 Programming Division that had some expertise
5 within the valuation an understanding of cable
6 networks. So we did the valuation.

7 Q And what did you to value the MFN
8 offer?

9 A Well, high level of what we did
10 was we said in essence what was being asked,
11 what was being given to Matt was an equity
12 percentage of the Tennis Channel, so we did a
13 valuation of what was that equity worth and
14 then in exchange for that, receiving that
15 equity, Comcast Cable was asked to pay
16 additional affiliate fees to increase the
17 carriage. So we put an assessment together of
18 what the value Comcast Cable received in terms
19 of the equity compared to the value that it
20 was being asked to give up in terms of the
21 cash fees it had to pay the Tennis Channel.

22 Q And let's just take that in

1 pieces. On the value that was coming in, that
2 was a valuation of Tennis Channel's equity.
3 Is that right?

4 A That's correct.

5 Q And how did you go about
6 performing an analysis of Tennis Channel's
7 equity?

8 A We used standard discounted cash
9 flow methodology, so we did a valuation, a
10 discounted cash flow, in essence, is putting
11 a value of all the future cash flows that a
12 company can generate or would be anticipated
13 to generate and bring -- discounting those
14 cash flows back to today's dollars and
15 assigning a value. So the theory being that
16 a company is worth the stream of cash it flows
17 off in the future. It's a standard way of
18 doing a valuation of a company.

19 Q I'd like to -- sir, did you
20 prepare any sort of analysis that was
21 presented to the cable side in connection with
22 this evaluation of the offer?

1 A We did. We provided a summary or
2 we prepared a summary of the analysis.

3 MR. MOSS: Your Honor, I'd like to
4 look at that analysis. May I approach?

5 JUDGE SIPPEL: You may, certainly.

6 MR. MOSS: Thank you.

7 MR. MOSS: Your Honor, this is
8 Comcast Exhibit 60. I have a copy of this for
9 the witness. If everybody else has their
10 binders, I'm happy to hand out copies if
11 anyone doesn't have them. The white binder.
12 It's Tab C. It's the first part of Tab C.

13 JUDGE SIPPEL: Thank you.

14 MR. MOSS: Your Honor, would you
15 like a copy or do you have your binder?

16 JUDGE SIPPEL: Mr. Carroll said I
17 could keep the one he gave me.

18 MR. MOSS: That's right.

19 JUDGE SIPPEL: Tab C?

20 MR. MOSS: Yes, Your Honor.

21 JUDGE SIPPEL: And?

22 MR. MOSS: It's the first document

1 in Tab C, Your Honor. It says "The Tennis
2 Channel MFN Equity for Carriage Offer, July
3 2006." It's just the very first document.

4 JUDGE SIPPEL: I have it. And
5 this is Comcast 60?

6 MR. MOSS: Yes, Your Honor.
7 That's correct.

8 JUDGE SIPPEL: I have it.

9 BY MR. MOSS:

10 Q Mr. Donnelly, can you identify
11 Comcast 60 for us?

12 A This is a PowerPoint summary of
13 all the work that we did to do a valuation of
14 The Tennis Channel. There was a lot of work
15 that was behind this, but this was just a
16 summary of the end results.

17 Q Mr. Donnelly, you talked about the
18 projecting the cash flows and then discounting
19 them back to present value. Where did you
20 receive the information that underlie that
21 analysis?

22 A We would reach out to The Tennis

1 Channel, so we would have made the due
2 diligence request and one of the things we
3 would have asked for was their business model.
4 So we started with their business model and
5 made adjustments to that.

6 Q And did you review the assumptions
7 in Tennis Channel's business model?

8 A Yes, we did. We looked at -- we
9 reviewed all their assumptions, kept a
10 majority of them, and made a change to just a
11 small number.

12 Q And was there an assumption
13 relating to subscriber projections?

14 A There was.

15 Q And did Comcast adopt Tennis
16 Channel's projection on subscriber
17 projections?

18 A We did. We used the same total
19 subscribers that Tennis Channel used in its
20 model.

21 Q Which assumptions, if any, did you
22 not adopt of the Tennis Channel's business

1 model?

2 A The primary assumption related to
3 advertising. We felt that their advertising
4 assumptions were inflated, that they were
5 overstated and so we reduced their advertising
6 assumptions in the model that we ran our
7 evaluation upon.

8 Q And on what did you base the view
9 that Tennis Channel's advertising assumptions
10 were inflated?

11 A We reached out to our experts and
12 we run a number of national cable networks and
13 I have an advertising team that sells
14 advertising for our networks. There's a
15 gentleman by the name of Dave Cassaro who
16 heads up my advertising team. He has decades
17 of experience in advertising and he sells
18 advertising for each of our national networks.

19 And then we also talked to a
20 gentleman by the name of Gene Pizzolato, who
21 is in our Golf Channel and he sells, at that
22 point in time he sold advertising for the Golf

1 Channel prior to coming to us. He had also
2 sold sports advertising for broadcast
3 networks.

4 Q And can you just briefly summarize
5 for us what the views of Mr. Pizzolato and Mr.
6 Cassaro regarding Tennis Channel advertising
7 assumptions?

8 A Sure. They both felt that they
9 were inflated, they were too high, too high an
10 estimate is probably the right way to say it.
11 And Dave's number was -- I don't remember
12 specifically. Dave's number was lower than
13 Gene's, Gene Pizzolato.

14 What we ended up doing was we used
15 Gene's higher numbers in our model. It was
16 lower than the Tennis, but we used the high
17 end of the range that we thought was
18 reasonable.

19 Q And that's sort of on the equity
20 side, on the valuation side. As far as the
21 costs, what did you do to model the costs?

22 A So we took a look at the

1 subscribers that Matt was required to -- or
2 the cable operators were required to provide
3 under its affiliation agreement. And we
4 toggled that back and forth whether or not the
5 cable provided the incremental [REDACTED] million
6 subscribers that The Tennis Channel was asking
7 them to provide.

8 Q And where did the [REDACTED] -- did you
9 have an understanding where the [REDACTED] million
10 number came from?

11 A It was the MFN offer, so it came
12 out of similar number. I'm assuming it's a
13 similar number. I can't recall at this point
14 in time. I'm assuming it's a similar number
15 to that which EchoStar had a launch. That
16 would be the MFN. It would have to be in
17 parity with what EchoStar did.

18 Q And EchoStar is Dish?

19 A Is Dish. I'm sorry. Yes.

20 Q Now how did the costs and benefits
21 compare to each other in this analysis?

22 A Based upon the numbers that we ran

1 in our analysis, the costs, the incremental
2 costs of distribution, incremental affiliate
3 fees the Cable Division would have to pay were
4 in excess of the value of the equity that they
5 were receiving.

6 Q And was this analysis presented to
7 Mr. Bond?

8 A We communicated to the Cable
9 Division the results of our analysis, yes.

10 Q Now Mr. Donnelly, first of all, in
11 conducting this analysis, did you have any
12 help from anyone on your team in the
13 Programming Group?

14 A I did. A woman by the name of Ann
15 Micka did the work for me and she's arguably
16 my best person.

17 Q And who is Ann Micka, what's her
18 role in your group?

19 A She was in my Business Development
20 Team. She's been with me since I got there.
21 Very strong.

22 Q Now in conducting this analysis,

1 did you or Ms. Micka or anyone to your
2 knowledge consider the effect that either
3 accepting or rejecting this proposal would
4 have on Comcast affiliated networks
5 specifically Golf Channel and Versus?

6 A No, that wouldn't enter into an
7 equity valuation for the company.

8 Q Do you know whether or not Mr.
9 Bond's group accepted or rejected this offer?

10 A I believe they rejected it.

11 Q And did you have any follow up
12 with Tennis Channel relating to the analysis
13 that was performed by you and your group in
14 2006?

15 A Yes. I think The Tennis Channel
16 reached us, I can't recall exactly, but asked
17 us if we would explain to them how we came to
18 our conclusion, if we could give an indication
19 of what went into our modeling and the
20 modeling assumptions. We had a phone call
21 with The Tennis Channel subsequent to it where
22 we explained to them what went into -- in

1 essence, I'm guessing. I can't recall the
2 specific conversation, but in essence, the
3 information that would be in this deck.

4 Q So Tennis Channel, I think it's
5 your testimony that Tennis Channel reached out
6 to you, asked your group to explain to them
7 the analysis that you did.

8 A Yes.

9 Q And did you have that call with
10 them?

11 A Yes, we did. We shared with them
12 what we thought were the underlying issues
13 with the analysis that they presented to us.

14 Q Do you recall with any specificity
15 what you discussed on that call?

16 JUDGE SIPPEL: Who was in on the
17 conversation, too?

18 THE WITNESS: It would have been -
19 - I think in 2006 it was Ann Micka who did the
20 work, plus myself. And my recollection is
21 probably the CFO or somebody in Finance at the
22 Tennis Channel, Your Honor. I can't

1 specifically remember who was on that call.

2 BY MR. MOSS:

3 Q Did you, yourself, take any notes
4 of that call?

5 A I did not.

6 Q Let's see if we can refresh your
7 recollection.

8 MR. MOSS: Your Honor, I'd like to
9 mark -- may I approach, Your Honor?

10 MR. SCHMIDT: Your Honor, these
11 are highly confidential documents.

12 MR. MOSS: These are your
13 documents, yes.

14 MR. SCHMIDT: I don't think you
15 should show them to the witness.

16 MR. MOSS: Your Honor, these are
17 notes from The Tennis Channel side of the call
18 that Mr. Donnelly is describing. There's no
19 highly confidential information here. They're
20 merely transcribing what Mr. Donnelly and Ms.
21 Micka told The Tennis Channel on the phone
22 call.